

The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a PLR).

January 17, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/)), is in response to your letter of October 4, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are writing to you requesting a Private Letter Ruling (PLR), pursuant to 2 Ill. Admin. Code 1200.110, addressing the jurisdictional rules for application of local Retailers' Occupation Tax (ROT) as they relate to retail sale transactions in Illinois. PLRs respond to inquiries made by taxpayers or their representatives under power of attorney (attached). Further, we understand that PLRs discuss tax principles or applications and are binding on the Illinois Department of Revenue (the IDOR) to the extent that the material facts of the situation remain the same, and the law relied upon in the ruling does not change.

## **FACTS**

### **1. The Business Organization**

COMPANY is in the business of offering personal, corporate, and institutional financial services to customers throughout the United States. COMPANY is headquartered in CITY, Illinois. It also maintains other locations throughout the state. COMPANY is centralizing its purchasing activities by establishing a wholly owned subsidiary called the ABC to serve as its central procurement arm.

ABC's main branch is located in CITY, Illinois. ABC has two other locations in Illinois: A second branch is located in CITY2, Branch2). A third branch is located in CITY3,

Branch3). Each branch, from its respective location-CITY, CITY2, and CITY3-purchases for resale to COMPANY fixed assets and certain consumable supplies.

There are several reasons why COMPANY utilizes ABC to make its purchases. First, by establishing ABC, COMPANY consolidates its purchasing costs in a single entity located at certain strategic locations. Further, by having a separate entity handle its purchases, COMPANY reduces administrative burdens, thereby allowing it to monitor costs more efficiently. Finally, by having ABC's three branches each be responsible for purchases of specifically designated goods, COMPANY tracks the costs of these classes of purchases more systematically.

## 2. Organization of ABC

ABC has the following attributes:

- It is a separate legal entity designed to supply certain goods to COMPANY.
- It has its own Illinois Business Tax registration number.
- ABC is registered to collect the Illinois Retailers' Occupation Tax and remit other applicable state and local taxes.
- ABC's respective branches have the following purchasing functions:
  - CITY. purchases non-technology related equipment (i.e., furniture and fixtures) for COMPANY's locations.
  - BRANCH2, located in CITY2, purchases goods for one of COMPANY's service lines.
  - BRANCH3, located in CITY3, purchases technology related equipment for COMPANY.
- Each branch leases at fair market value office space from COMPANY.
- ABC has its own bank account which is separate from COMPANY's.
- It maintains its own separate books and records.
- It enters into purchasing contracts with various vendors.
- It has with COMPANY a master sales agreement covering its purchases of certain goods. The agreement stipulates for the branches the property which each is required to purchase for resale at fair market value to COMPANY.
- It has with COMPANY an employee leasing and administrative services agreement. The agreement obligates COMPANY to provide, in exchange for a fee, employees and administrative support to ABC
- Each branch performs as its own respective location sales related document processing functions.

- ABC sells fixed assets to COMPANY, pursuant to installment sale contracts. The contracts are negotiated and signed by ABC at the location of the respective ABC branch which is purchasing the fixed asset for resale to COMPANY. The contracts provide for transfer to COMPANY of title to and ownership of the fixed assets purchased. In return, COMPANY tenders to ABC periodic payments of principal, interest, and sales tax. The duration of the installment payments is five years which corresponds generally to the depreciable lives under GAAP of the purchased assets.

### 3. The Sales Process

ABC effectuates purchasing and sales in the following manner:

- COMPANY determines the purchasing needs of its locations and then conveys this information as orders to ABC's branches. For example:
  - Orders associated with non-technology related equipment used by COMPANY's locations are placed with CITY.
  - Orders associated with COMPANY's Network are placed with the BRANCH2, located in CITY2.
  - Orders associated with technology related equipment are placed with the BRANCH3, located in CITY3.
- Once the appropriate branch receives an order from COMPANY, it reviews and approves the order. The approval unconditionally binds ABC to the terms and conditions of the sale. The approval is in written or electronic form. It lists the name and municipal location of the branch which received the order from COMPANY and then approved it.
- ABC then sends its own order to a vendor with which it has a contractual relationship.
- ABC typically requests that goods ordered from vendors be drop shipped directly to the relevant COMPANY locations in the state. ABC also provides the vendors with Illinois Certificates of Resale.
- Once a branch receives an invoice from the vendor, it sends its own sales invoice for the amount due plus sales tax to COMPANY. The amount due reflects fair market value pricing. The invoicing to COMPANY is done monthly.
- ABC records in its books and records the purchase of goods from the vendor and the subsequent sale of the goods to COMPANY.
- ABC remits payment to the vendor, and COMPANY remits in turn payment to ABC in accordance with the terms of the installment sale agreement where applicable.
- ABC remits to the IDOR all sales tax collected from COMPANY. In other words, ABC remits sales tax on a gross receipts basis.

- When ABC sells fixed assets to COMPANY, it does so under the terms of a master installment sale contract which has the following stipulations:
  - ABC signs the contract at the branch location which is making the sale.
  - The contract describes the fixed asset (or group of assets) purchased, price, and terms of payment, including the interest rate charged over the length of the contract.
  - The interest rate reflects arm's length market conditions.
  - An amortization schedule is attached to the installment sale contract. It details how each installment payment over the life of the contract will be applied to principal, interest, and sales tax, respectively.
  - ABC books the transaction as an asset sale for which it posts a note receivable due from COMPANY. COMPANY pays off the note over time and incurs interest expense on the payments, just as ABC recognizes therefrom interest income.
  - COMPANY books the transaction as an asset purchase which it depreciates over a book life, in accordance with GAAP.
  - The final installment payment made is considered nominal relative to the original selling price of the asset.

## ISSUES

1. Where do the taxable retail sales between COMPANY and ABC's three respective branches-CITY., BRANCH2, and BRANCH3-take place for purposes of determining the appropriate local sales tax rate to apply?
2. How should ABC's installment sales to COMPANY be treated for Illinois sales tax?

## STATEMENT

Neither COMPANY nor ABC is currently under audit by the IDOR. Further, the issues presented in this PLR are not pending in litigation in a case involving COMPANY. To the best of our knowledge, the IDOR has not previously ruled on the same or similar issues for COMPANY. Nor has COMPANY submitted a petition on a similar issue and withdrawn it before a PLR was issued.

## LAW

### 1. LOCAL SALES TAX

#### A. Sales Tax Laws

##### 1) State Sales Tax

Illinois imposes a Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10; 86 Ill. Adm. Code Sec. 130.101.

##### 2) Home Rule Sales Tax

The Illinois Constitution authorizes home rule units (e.g., municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home rule municipality may impose a tax upon all persons engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006; 65 ILCS 5/8-11-1.

### 3) RTA-ROT

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling at retail within certain counties tangible personal property. The RTA-ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a).<sup>1</sup>

### B. Order Acceptance Point

In determining the location of a sale for taxing purposes, the IDOR believes that the single most important element is the location where the seller accepts the customer's purchase order.<sup>2</sup> 86 Ill. Adm. Code Sec. 270.115(b), (c), 220.115(c), 630.120(b), and 320.115. ST 01-0007-PLR (February 15, 2001), ST 01-0018-PLR (May 16, 2001), ST 01-0003-PLR (February 2, 2001), ST 00-0085-GIL (April 19, 2000), ST 00-0038-General Information Letter (GIL, March 6, 2000), ST 00-0020-GIL (January 26, 2000), ST 91-1008-PLR (December 18, 1991), ST 93-0569-GIL (November 8, 1993), and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) where the seller receives it from the purchaser. 86 Ill Adm. Code Sec. 270.115(b)(2) and (c)(I). This is the case regardless of whether or not the purchaser takes delivery of the goods at the seller's place of business-provided that the purchaser receives physical possession of the property somewhere in Illinois. If the order acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with the imposition of local sales taxes. Id.

In one PLR, a company formed a wholly owned subsidiary to serve as its central procurement source. The subsidiary maintained an office at the company's headquarters. The subsidiary entered into a master sale agreement with the company setting forth the terms and conditions regarding the subsidiary's procurement function for the company. The IDOR found that the tax of the locality where the signed sales agreement was received applied. ST 01-0003-PLR (February 2, 2001).

In a GIL, the IDOR writes that 'if an order is placed at one Illinois location, while the property is located at another Illinois location, the [IDOR] will consider the place at which the order is accepted to govern for purposes of imposition of local taxes. In situations where an order originally placed with one location is processed and accepted at a second location, where the credit card information is accepted, and the sales invoice or other paperwork is generated, the tax rate of the second location would apply.' ST 98-0338-GIL (November 9, 1998).

## 2. **INSTALLMENT SALE CONTRACT**

Illinois law provides that consideration tendered for 'time sales' are gross receipts subject to sales tax 'only as and when payments are received by the seller.' 35

ILCS120/1. A Conditional sale (installment sale or financing lease<sup>3</sup>) contract is considered a sale for purposes of the Illinois Retailers' Occupation Tax. ST 99-0169-GIL (May 17, 1999) and ST 94-0291-GIL (July 20, 1994). In Illinois, a conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Id. Further, if a seller guarantees at the time of the contract that the property will be sold--that title to or ownership of the property will be transferred to the buyer--the transaction is considered to be a conditional sale at its outset, thereby causing consideration when received to be subject to the ROT. 86 Ill. Adm. Code Sec. 130.2010 and ST 99-0169-GIL (May 17, 1999).

Under an installment sale contract, the seller purchases property tax free by issuing a resale certificate to its vendor. 35 ILCS120/1, ST 94-0291-PLR (July 20, 1994), and ST 92-0377-PLR (July 21, 1992). The seller then remits sales tax collected from the buyer on that portion of the gross receipts from each installment payment that represents the principal amount due on the property. 35 ILCS 120/1, 86 Ill. Adm. Code Sec. 130.2010(a), 86 Ill. Adm. Code Sec. 150.901(b), ST 02-0006-PLR (March 21, 2002), ST 01-0091-GIL (May 15, 2001), ST 98-0280-PLR (August 14, 1998), and ST 99-0169-GIL (May 17, 1999). Financing charges (i.e., interest) are not considered part of the gross receipts from the sale and hence are not taxable. 86 Ill. Adm. Code Sec. 130.420(a). Further, the retailer's books and records should clearly reflect the interest charges. Otherwise, they are presumed to be no greater than like charges customarily made in the trade in connection with similar installment sales. 86 Ill. Adm. Code Sec. 130.420(a).

## **ANALYSIS**

### **1. LOCAL SALES TAX**

For local Illinois sales tax purposes, all taxable retail sales between ABC and COMPANY occur at ABC's respective branch locations. This is because order acceptance takes place at each of the branch's locations as is demonstrated by the following activities:

- CITY., BRANCH2, and BRANCH3 each receive and accept at their respective locations orders from COMPANY. When a respective branch accepts an order at its municipal location, it binds ABC unconditionally to the terms and conditions of the sales agreement with COMPANY. Sales invoices to COMPANY are also subsequently sent out from the same branch location which had accepted COMPANY's order.
- For the purchases of fixed assets, installment sale contracts are received and signed at the location of the respective ABC branch which is purchasing the asset for resale to COMPANY.
- Since COMPANY wishes to streamline business operations and achieve cost efficiencies by centralizing purchasing activities at certain strategic locations, it clearly intends that ABC accept orders at each of its branch's respective locations.

Thus, pursuant to the facts and Illinois law, the following local sales tax rates apply:

- The CITY sales tax rate applies when ABC's CITY. Branch, located in the City, sells goods to COMPANY's locations.
- The CITY2 sales tax rate applies when ABC's BRANCH2, located in CITY2, sells goods to COMPANY's network.
- The CITY3 sales tax rate applies when ABC's BRANCH3, located in CITY3, sells goods to COMPANY's locations.

The IDOR in ST 98-0338-GIL opined that local sales tax rates apply where customers' purchase orders are accepted. The IDOR ruling in ST 01-0003-PLR also supports this conclusion. Like the parent in ST 01-0003-PLR, COMPANY has ABC act as its purchasing company. In both cases, the local sales tax applies where the final action that binds the parties to the sale occurs. After applying the reasoning set forth in ST 01-0003-PLR and ST 98-0338-GIL to the present case, it is clear that all sales transactions between COMPANY and ABC are accepted at the respective locations of ABC's branches.

## **2. INSTALLMENT SALE CONTRACT**

COMPANY should incur through its installment sales contracts sales tax on its purchases of fixed assets. COMPANY, however, should only be subject to the sales tax on the portion of the sale representing the principal amount paid for the fixed assets. As exemplified by aforementioned IDOR rulings, sales tax should only be due on the principal portion of each installment payment as it is made. ST 02-0006-PLR and ST 99-0169-GIL. ABC would then be required to collect the tax and remit it timely to the IDOR. Financing charges (i.e., interest) are not considered part of the gross receipts from the sale and should not be taxable.

## **CONTRARY AUTHORITY AND DISCUSSION**

No authority contrary to the above cited authorities is known.

## **INFORMATION TO BE WITHHELD**

W respectfully request that the IDOR delete any mention of the following from the publicly disseminated version of this PLR:

- [NAMES]

## **CONCLUSION**

Based on the foregoing facts, please confirm that (1) for purposes of imposing local sales tax, the order acceptance point for ABC's taxable retail sales occurs at each of its respective branches-namely, wherever COMPANY's orders and/or installment sales contracts are placed and accepted, and (2) sales tax on installment sales between ABC and COMPANY is due on the principal portion of each payment as it is periodically made. These conclusions are consistent with state law and prior IDOR rulings.

We also request that the IDOR contact PERSON before rendering a written decision and issuing a PLR addressing the issues presented. Your care in responding to requests is very much appreciated.

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

In the situation you describe, the purchase orders are accepted at the individual branches and therefore, the tax rate in effect at each branch's location is applicable for any purchase order accepted there.

Your second issue regards installment contracts/conditional sales. For computing the amount of Retailers' Occupation Tax and Use Tax incurred on the installment contract payments for the items sold by the individual branches, tax would be incurred as those payments are made and only on the principal portion of those payments (not on the interest or finance charges) as long as the books and records of each branch clearly reflect such interest or finance charges. See 86 Ill. Adm. Code 130.401(a) and 86 Ill. Adm. Code 130.420(a).

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.

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<sup>1</sup> The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property - the County Water Commission Retailers' Occupation Tax (the CWC-ROT). 70 ILCS 3720/4(a). The county may impose the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY 88-12, Illinois Department of Revenue (the IDOR) December 1, 1987. 86 Ill. Adm. Code Sec. 630.101(a)

<sup>2</sup> '[T]he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business ...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule ... Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.' 86 Ill. Adm. Code Sec. 270.115(b)(1).

<sup>3</sup> As this is opposed to a 'true' or operating lease.